



Department of Justice

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JUSTICE DEPARTMENT URGES KENTUCKY BAR TO CONTINUE TO ALLOW NON-LAWYER REAL ESTATE CLOSINGS

Bar Opinion Would Likely Raise Prices, End Consumer Choice

Washington, D.C. -- The Department of Justice yesterday issued a letter urging the Kentucky Bar Association Board of Governors to reject a proposed opinion that would prevent non-lawyers from competing with lawyers to perform real estate closings.

According to the letter, the Department's Antitrust Division expressed concern that eliminating this competition would likely raise real estate closings costs and leave consumers with fewer choices.

"If this opinion is approved, residents of Kentucky will be deprived of a choice they have had for over 17 years," said Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division. "Consumers will likely have to pay higher fees to hire a lawyer to provide real estate closing services, making it more costly and difficult for consumers to buy or refinance a home."

Currently, residents of Kentucky can choose between using a lawyer or a non-lawyer settlement service, such as a title company or realtor. The bar opinion would require that a lawyer conduct or supervise a settlement whenever consumers buy or sell property, and when they refinance their mortgages or get a home equity loan. Bankers who close their own loans are the only exception allowed under the proposed opinion.

Klein said the opinion would raise prices in two ways. "First, it would force residents of Kentucky who prefer not to pay a lawyer to provide closing services to do so. Second, without competition from non-lawyers, the fees lawyers charge are likely to go up--resulting in higher prices even for consumers who wish to use a lawyer."

The Kentucky Bar Association's Board of Governors will consider the opinion at its meeting on Tuesday, July 15, 1999. The Board is re-considering an opinion it initially approved in January of this year. If the Board of Governors approves the opinion, it must then be approved by the Kentucky Supreme Court to be binding. In 1997, the Board of Governors considered a similar proposal but declined to adopt it following the issuance of a letter by the Department expressing concerns similar to those it has expressed today.

In addition to the concerns expressed about limiting consumer choice, today's letter questions the need to adopt the opinion to protect consumers' interests. The opinion does not offer any evidence that Kentucky consumers have been hurt in the nearly 18 years in which lay closings have been permitted in Kentucky, nor does it guarantee that a lawyer will actually be present at the closings.

The proposed opinion would allow lawyers to delegate closing duties to lay employees under their supervision. The opinion does not require that lawyers who do closings have any specialized real estate training.

In addition, the lawyer at closing could represent the lender and not the consumer who is buying or selling property. Consequently, the opinion would do little to protect Kentucky consumers. "A lawyer hired by the lender represents the lender, not the consumer. He or she can't advise the consumer about whether a particular deed or loan term is in that consumer's best

interests," Klein said. "Consumers would end up paying for the services of the attorney, since they underwrite the entire costs of the closing, but they would not be getting the benefit of having an attorney to advise them."

The new opinion would overturn a 1981 state opinion that permitted non-lawyers to provide settlement services. Since this opinion was issued, non-lawyers have increasingly offered closing services in Northern Kentucky, Louisville, Lexington, and other parts of the state.

Consumers in much of the country can choose between lawyers and non-lawyer services, the Department said. Since 1996, both Virginia and New Jersey have considered and rejected bans on non-lawyer closing services.

The Department also wrote in its letter that uninformed consumers can be protected by measures far less anticompetitive than an outright ban on non-lawyer closings. The New Jersey Supreme Court has required written notice to consumers of the risks involved in closing without an attorney.

In certain situations, consumers may want to hire their own attorney to provide legal advice, negotiate disputes, or offer other protection. According to the Department, non-attorney closing services should not be eliminated as an alternative for those who wish to use them.

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